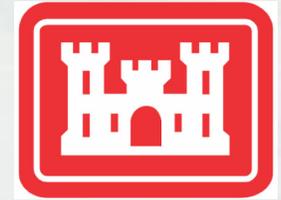


Clean Water Act Section 404 and USACE Permitting Process



Casey Ehorn

Chief, Regulatory Division (Acting)

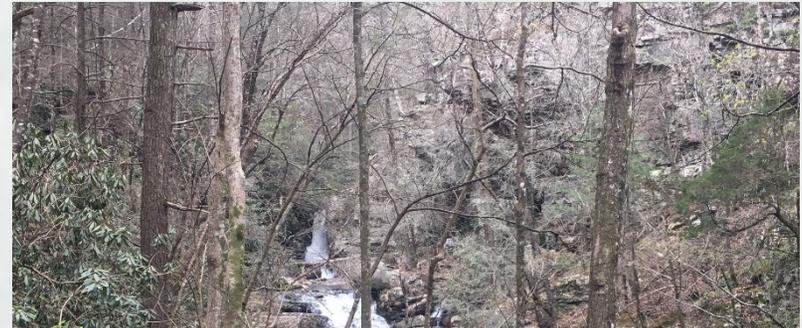
Nashville District

Aric Payne

Biologist, Regulatory Division

Nashville District

Joint Outreach Event
Fleming Training Center
Murfreesboro, Tennessee
May 23, 2019



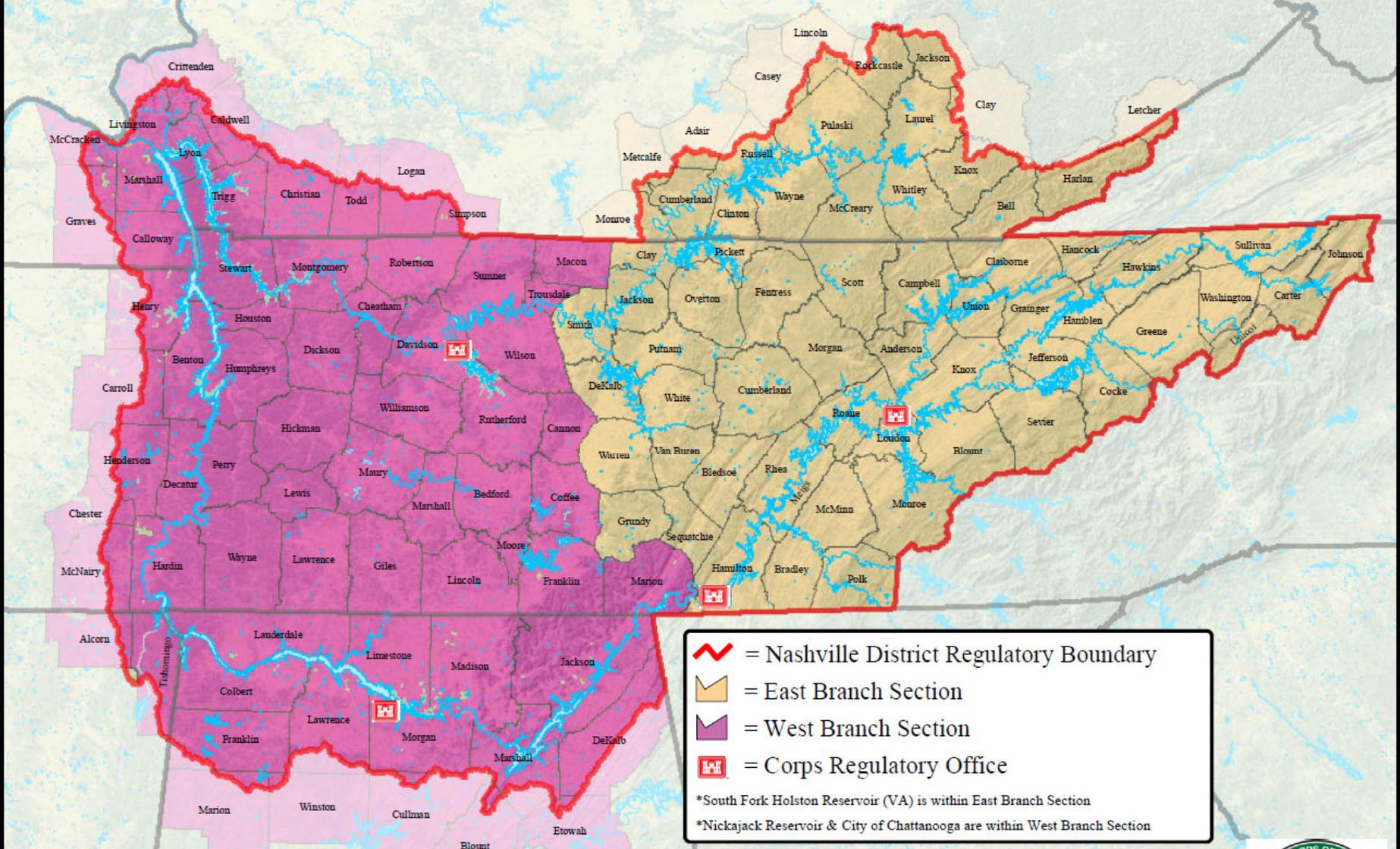
The views, opinions and findings contained in this report are those of the author(s) and should not be constructed as an official Department of the Army position, policy or decision, unless so designated by other official documentation.

Objectives

- Recognize the limits and extent of Corps jurisdiction and activities subject to regulation
- Permitting Process
 - Jurisdictional Determinations
 - Nationwide Permits
 - Standard Permits
- Example Scenario*



U.S. Army Corps of Engineers Nashville District Regulatory Boundary



 = Nashville District Regulatory Boundary
 = East Branch Section
 = West Branch Section
 = Corps Regulatory Office

*South Fork Holston Reservoir (VA) is within East Branch Section
 *Nickajack Reservoir & City of Chattanooga are within West Branch Section



Regulatory Division Contacts:
 Main Office (Nashville) 615-369-7500
 Eastern Field Office (Lenoir City, TN) 865-986-7296
 Western Field Office (Decatur, AL) 256-350-5620
 Chattanooga Field Office 423-394-5102



Geographic Jurisdiction

- Determining whether a particular aquatic resource is jurisdictional and therefore regulated under Corps authorities



Activity Jurisdiction

- Determining whether a particular activity is jurisdictional and therefore regulated under Corps authorities



Permit Process

- When Geographic Jurisdiction and Regulated Activity both exist, a permit is required under Corps authorities



Regulatory Program Authorities

“Navigable Waters of the United States”

Definitions

Navigable waters: waters subject to the ebb and flow of the tide; has a connection to transportation of interstate commerce

Interstate commerce: defined as had, presently has, or potential to have interstate commerce

Determination of navigability:

- Navigability Study
- Act of Congress
- Court Case



Regulatory Program Authorities

“Navigable Waters of the United States”

Section 9 of the Rivers and Harbors Act of 1899

- Corps authorizes dams and dikes across navigable waters of the U.S.



Regulatory Program Authorities

“Navigable Waters of the United States”

Section 10 of the Rivers and Harbors Act of 1899

- To protect and preserve the navigability of navigable waters
- Requires that you obtain a permit from the Regulatory Division for any **structure** or **work** in, over, or under a navigable water of the U.S.



Regulatory Program Authorities

“Navigable Waters of the United States”

Section 10 regulated activities include:

- buoys
- floats
- marinas
- bulkheads
- breakwaters
- dredging
- fill
- piers
- piling
- boatlifts
- boat ramps
- marine railways
- disposal of dredged material



Regulatory Program Authorities

Section 103 of the Marine, Research and Sanctuaries Protection Act of 1972

- The **transportation** of dredged material excavated from navigable waters of the U.S. for the purpose of **dumping** it in ocean waters 33 CFR 324.3(a)
- Disposal must not unreasonably degrade or endanger human health, welfare, marine environment, or ecological systems

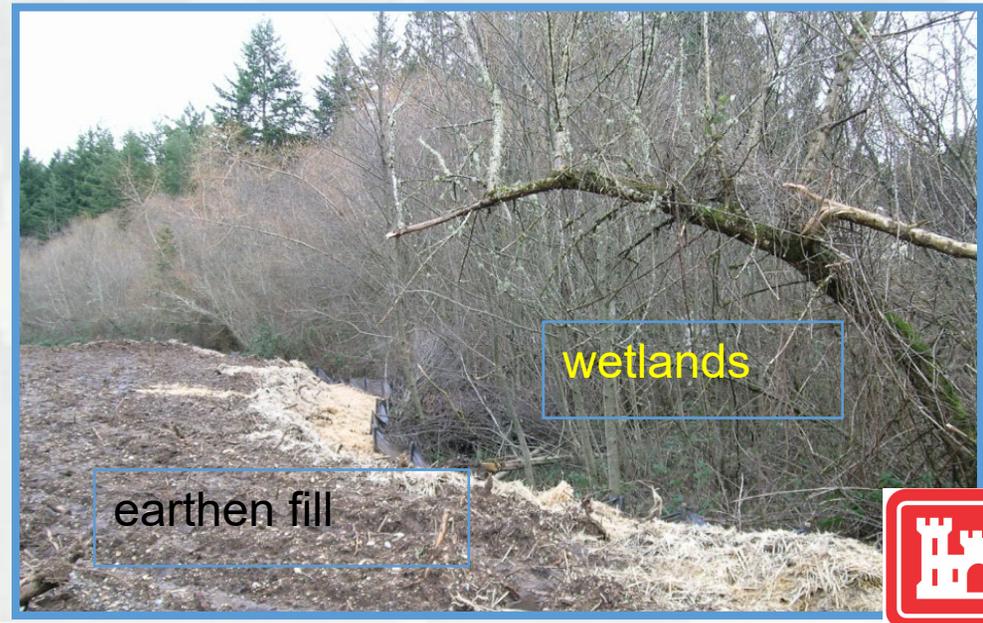


Regulatory Program Authorities

“Waters of the United States”

Section 404 of the Clean Water Act

- To restore and maintain the chemical, physical and biological integrity of the waters of the U.S.
- Requires that you obtain a permit from the Regulatory Division for the **discharge of dredged or fill material** in any **Water of the U.S.**



Scope of the Clean Water Act

- **Navigable Waters**
 - For example: oceans, bays, and inlets
- **Tributaries** to navigable waters
 - For example: rivers and creeks, ephemeral and intermittent streams
 - Lakes and ponds
- **Interstate** bodies of water or wetlands
- **Intrastate** bodies of waters or wetlands with an interstate commerce connection
- **Wetlands adjacent** to the waters listed above
- **Special aquatic sites**: sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle and pool complexes



Current practice for Jurisdictional Determinations

March 2000 Regulation (Final Rule for Appeal Process): Definitions for JD, PJD, and AJD appear in regulation. Introduces concept of AJD determination (presence/absence) and AJD delineation (defines boundaries).

RGL 05-05: Guidance on Ordinary High Water Mark (**OHWM**) Identification

Rapanos Guidance: 2007/2008 Coordination Memos: Introduced new AJD form and further standardized the JD process (including coordination).

- Included 9 month public comment period.
- 66,047 Comments received; revised guidance (2008).
- DOJ, DOT, CEQ, OMB, and DOI reviewed 2007/2008 Guidance.

RGL 08-02: Further defined difference between PJD and AJD and introduced PJD form.



Current practice for Jurisdictional Determinations

2015 Clean Water Rule: Final rule became effective on August 28, 2015. Further defined scope of waters protected under the Clean Water Act.

- In effect for approximately 6 months, and was stayed in Federal Court
- Applicability Date rule concerning the 2015 Rule was issued on 06 February 2018 where EPA and Army delayed implementation of the 2015 Rule until February 2020.
- U.S. District Court for the District of South Carolina entered an order and judgment enjoining “applicability rule” on 16 August 2018.
- This means that the 2015 Rule is now in effect in 26 states.



FEDERAL REGISTER

Vol. 80 Monday,
No. 124 June 29, 2015

Part II

Department of Defense

Department of the Army, Corps of Engineers

33 CFR Part 328

Environmental Protection Agency

40 CFR Parts 110, 112, 116, *et al.*

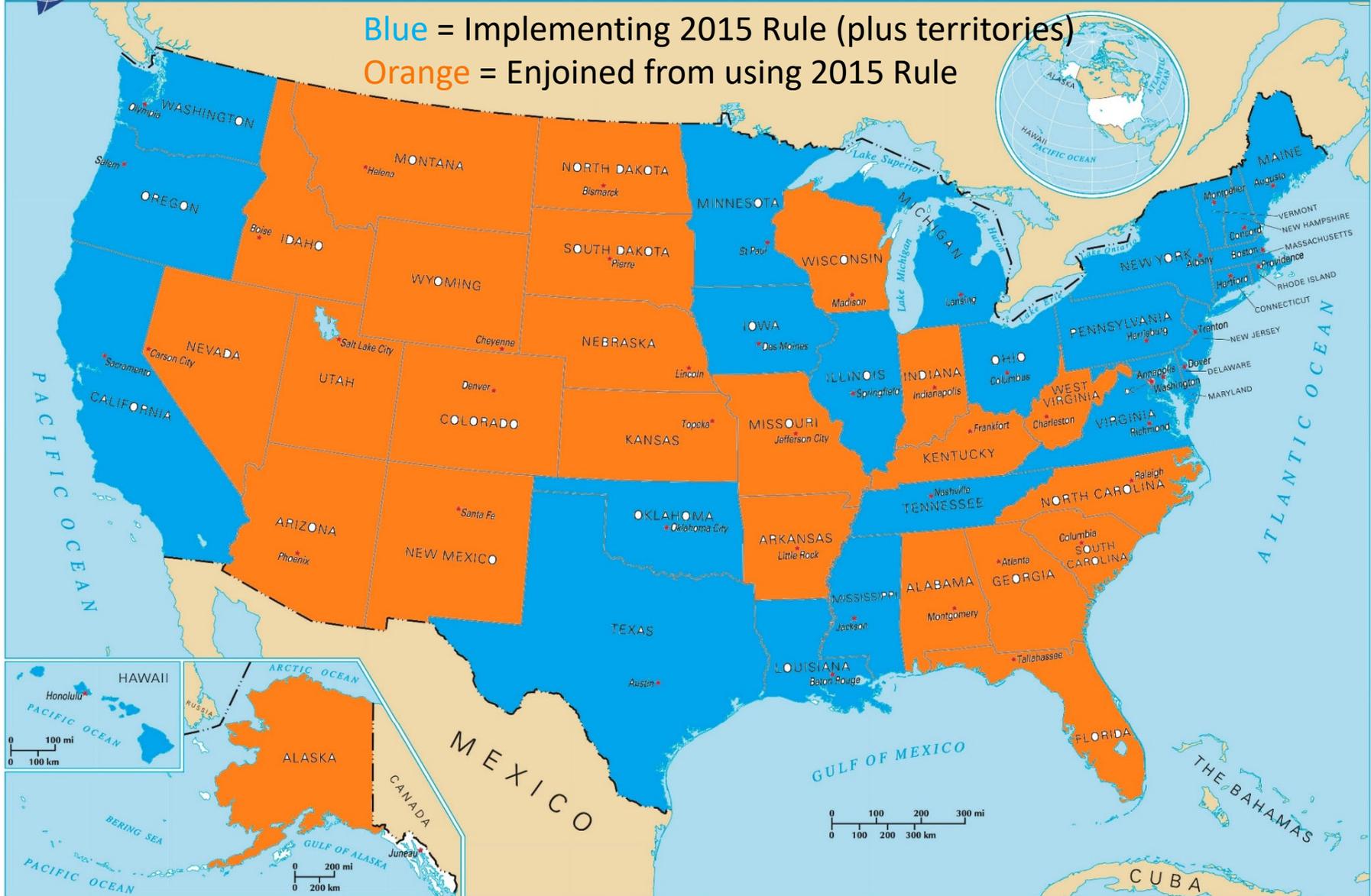
Clean Water Rule: Definition of “Waters of the United States”; Final Rule





Blue = Implementing 2015 Rule (plus territories)

Orange = Enjoined from using 2015 Rule



TNWs, Interstate Waters, Territorial Seas, and Impoundments

1986 Definition and 2003/2008 Guidance	2015 Clean Water Rule
•Includes all Traditional Navigable Waters (TNWs).	•(a)(1) waters.
•Includes all interstate waters.	•(a)(2) waters.
•Includes all territorial seas.	•(a)(3) waters.
•Includes all impoundments.	•(a)(4) waters.

Tributaries

1986 Definition and 2003/2008 Guidance	2015 Clean Water Rule												
<ul style="list-style-type: none"> •1986 Regulation: <ul style="list-style-type: none"> ➤ Includes all tributaries. •Under 2008 guidance: <ul style="list-style-type: none"> ➤ Jurisdiction over RPW tributaries of TNWs; SND for non-RPWs. ➤ Coordination required for SNDs. <p>*SND = significant nexus determination *RPW = relatively permanent water</p>	<ul style="list-style-type: none"> •(a)(5) waters. •Includes all tributaries. •All waters that meet the definition of tributary (has indicators of bed and banks/OHWM and contributes flow to the downstream waters) are jurisdictional by rule. 												
<table border="1"> <tbody> <tr> <td>Perennial flow</td> <td></td> <td>RPW</td> </tr> <tr> <td>Intermittent flow (flows > 3 months)</td> <td></td> <td>RPW</td> </tr> <tr> <td>Intermittent or Ephemeral flow (flows < 3 months)</td> <td></td> <td>Non-RPW*</td> </tr> <tr> <td>Section 10 navigable water</td> <td></td> <td>TNW</td> </tr> </tbody> </table>		Perennial flow		RPW	Intermittent flow (flows > 3 months)		RPW	Intermittent or Ephemeral flow (flows < 3 months)		Non-RPW*	Section 10 navigable water		TNW
Perennial flow		RPW											
Intermittent flow (flows > 3 months)		RPW											
Intermittent or Ephemeral flow (flows < 3 months)		Non-RPW*											
Section 10 navigable water		TNW											

Adjacent

1986 Definition and 2003/2008 Guidance	2015 Clean Water Rule
<ul style="list-style-type: none">•1986 Regulation:<ul style="list-style-type: none">➤ Includes all adjacent wetlands.➤ Defines adjacent as bordering, contiguous, or neighboring. •Under 2008 Guidance:<ul style="list-style-type: none">➤ Certain adjacent wetlands require SND to determine jurisdictional status.	<ul style="list-style-type: none">•(a)(6) waters. •All <i>waters</i> “adjacent” to (a)(1)-(a)(5) waters are jurisdictional by rule. •Includes wetlands, ponds, lakes, oxbows, impoundments, and similar waters. •Includes new definition of “adjacent” and “neighboring.” •Neighboring includes specific thresholds for “bright lines.”

Other Waters/Case-Specific Waters

1986 Definition and 2003/2008 Guidance	2015 Clean Water Rule
<ul style="list-style-type: none">•Includes all other waters the use, degradation or destruction of which could affect interstate or foreign commerce.•As of the 2001 <i>SWANCC</i> decision neither the Corps nor EPA have asserted jurisdiction over these “other waters”/isolated waters.	<ul style="list-style-type: none">•(a)(7) and (a)(8) waters.• “Case-specific significant nexus” waters.•See following slides.

(a)(7) and (a)(8) Waters

Final Rule (a)(7) Waters	Final Rule (a)(8) Waters
<ul style="list-style-type: none">• Five specific categories of waters in certain regions:<ul style="list-style-type: none">➤ (i) Prairie Potholes;➤ (ii) Carolina and Delmarva Bays;➤ (iii) Pocosins;➤ (iv) Western Vernal Pools;➤ (v) Texas Coastal Prairie Wetlands• Determined similarly situated by rule.• Require a SND to determine whether a WOTUS.	<ul style="list-style-type: none">• Waters located within the 100-year floodplain of (a)(1) through (a)(3) water.• Waters located within 4,000 feet of the HTL or OHWM of an (a)(1) through (a)(5) water.• Require a SND to determine whether a WoUS.

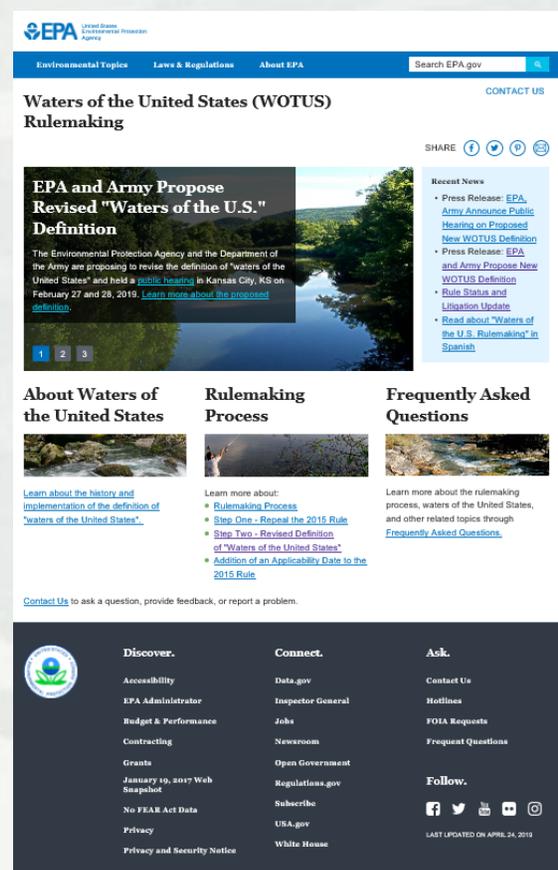
Waters and Features That Are Not WOTUS

1986 Definition and 2003/2008 Guidance	2015 Clean Water Rule Paragraph (b) of the Rule
<ul style="list-style-type: none">•1986 Regulations exclude:<ul style="list-style-type: none">➤ Waste treatment systems.➤ Prior converted croplands.•1986 Preamble identifies features that are “generally” not considered WOTUS.	<ul style="list-style-type: none">•Excluded waters/features, even if they otherwise meet (a)(4)-(a)(8) categories:<ul style="list-style-type: none">•WTSE and PCC.•Certain ditches.•Groundwater.•Stormwater control features.•Wastewater recycling structures.•Others features similar to 1986 Preamble waters.•Erosional features and lawfully constructed grassed waterways.•Puddles.

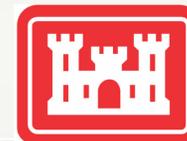
Implementing Executive Order 13778

- EPA and Army are implementing [Executive Order 13778](#), Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule, in two steps to provide certainty to the regulated community and the public while the agencies develop a revised definition of “waters of the United States.”
- [Step One - Repeal](#) - The agencies are proposing to repeal the 2015 Rule and recodify the regulation that was in place prior to issuance of the 2015 Rule.
 - The public comment period closed on August 13, 2018.
- [Step Two - Revise](#) - On February 14, 2019, the agencies published a proposed definition that would replace the approach in the 2015 Rule and the pre-2015 regulations, taking into consideration the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.
 - The public comment period closed on April 15, 2019
- Further info can be found at:

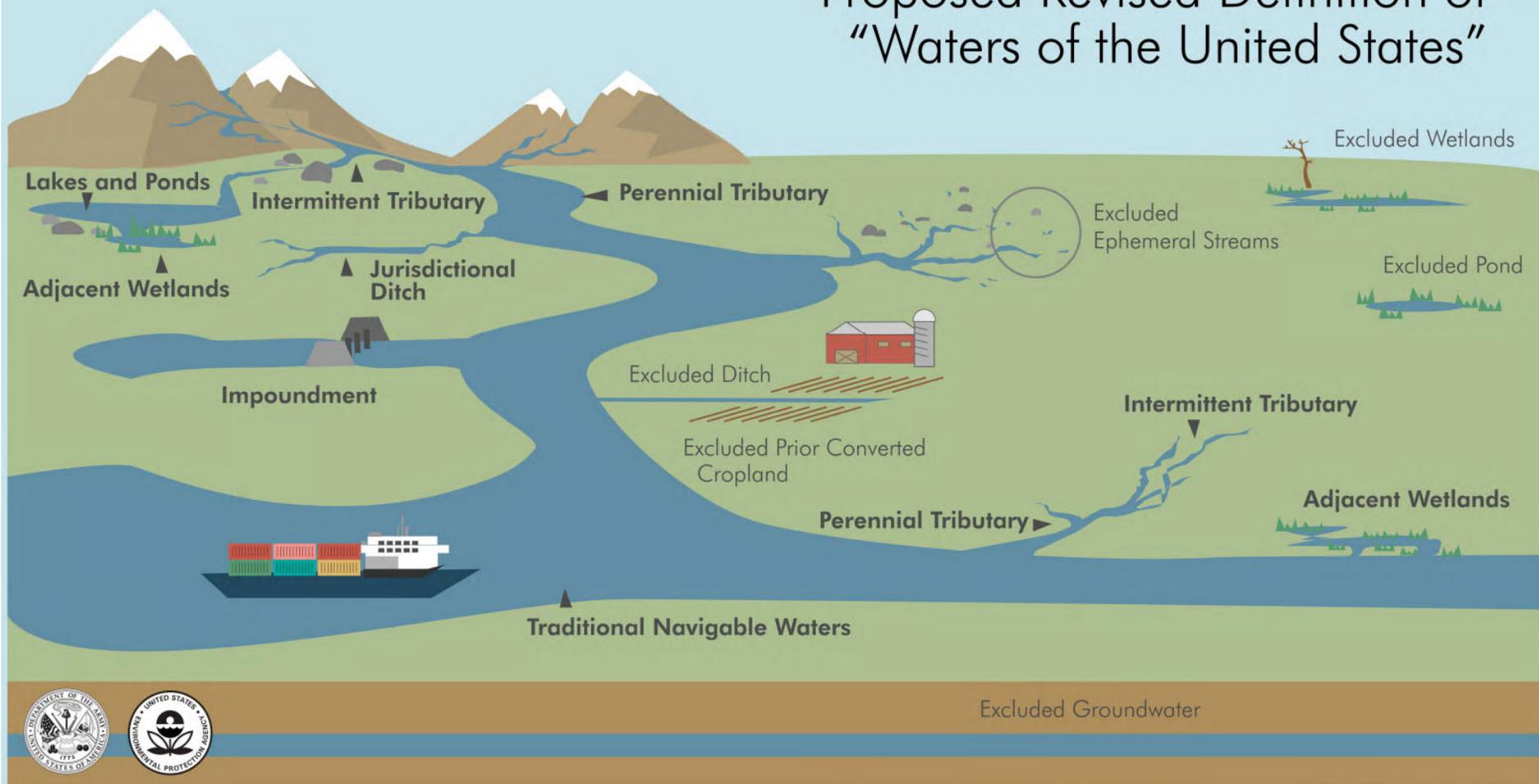
<https://www.epa.gov/wotus-rule>



The screenshot shows the EPA website page for "Waters of the United States (WOTUS) Rulemaking". The page features a navigation bar with "Environmental Topics", "Laws & Regulations", and "About EPA". The main content area includes a large header image with the text "EPA and Army Propose Revised 'Waters of the U.S.' Definition". Below this, there are three columns: "About Waters of the United States", "Rulemaking Process", and "Frequently Asked Questions". The footer contains a grid of links under the headings "Discover.", "Connect.", and "Ask.", along with social media icons and a "LAST UPDATED ON APRIL 24, 2019" notice.



Proposed Revised Definition of "Waters of the United States"



* For illustrative purposes only. Proposed jurisdictional waters in **bold**.

What is the Ordinary High Water Mark?

“The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presences of letter and debris, or other appropriate means that consider the characteristics of the surrounding areas.” [33 CFR 328.3(e)]

The OHWM demarcates the lateral extent of Federal jurisdiction for:

- **Sections 9 and 10** of the Rivers and Harbors Act of 1899
- **Section 404** of the Clean Water Act



Regulatory Guidance Letter 05-05

- Natural line impressed on the bank
- Shelving
- Changes in the character of soil
- Destruction of terrestrial vegetation
- Presence of litter and debris
- Wracking
- Vegetation matted down, bent or absent
- Change in plant community
- Sediment sorting
- Leaf litter disturbed or washed away
- Scour
- Deposition
- Multiple observed flow events
- Bed and banks
- Water staining



US Army Corps
of Engineers®

REGULATORY GUIDANCE LETTER

No. 05-05

Date: 7 December 2005

SUBJECT: Ordinary High Water Mark Identification

1. Purpose and Applicability

a. Purpose. To provide guidance for identifying the ordinary high water mark.

b. Applicability. This applies to jurisdictional determinations for non-tidal waters under Section 404 of the Clean Water Act and under Sections 9 and 10 of the Rivers and Harbors Act of 1899.

2003/2008 Guidance

Only need two OHWM characteristics

2015 Clean Water Rule: Tributaries

Requires bed and bank in addition
to one more physical characteristic



Wetland Definition

Corps/EPA definition for Clean Water Act Section 404 purposes:

- Areas that are inundated or saturated by surface or ground **water** at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of **vegetation** typically adapted for life in **saturated soil** conditions

33 CFR 328.3(b)



Geographic
Jurisdiction



Regulated
Activity

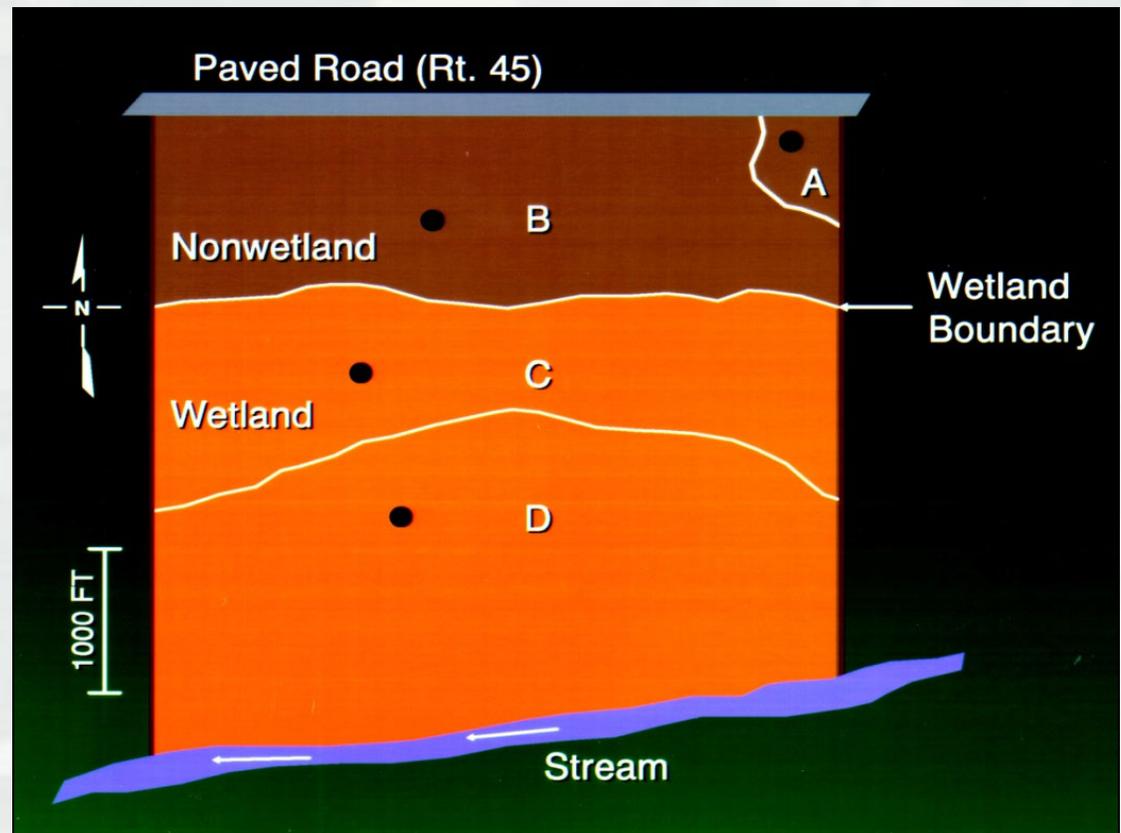


Permit
Process



Jurisdictional Determinations (JDs)

Written determination detailing the **limits** (OHWM, MHW, HTL, wetland boundary) of waters of the U.S. in the review area



Jurisdictional Determinations

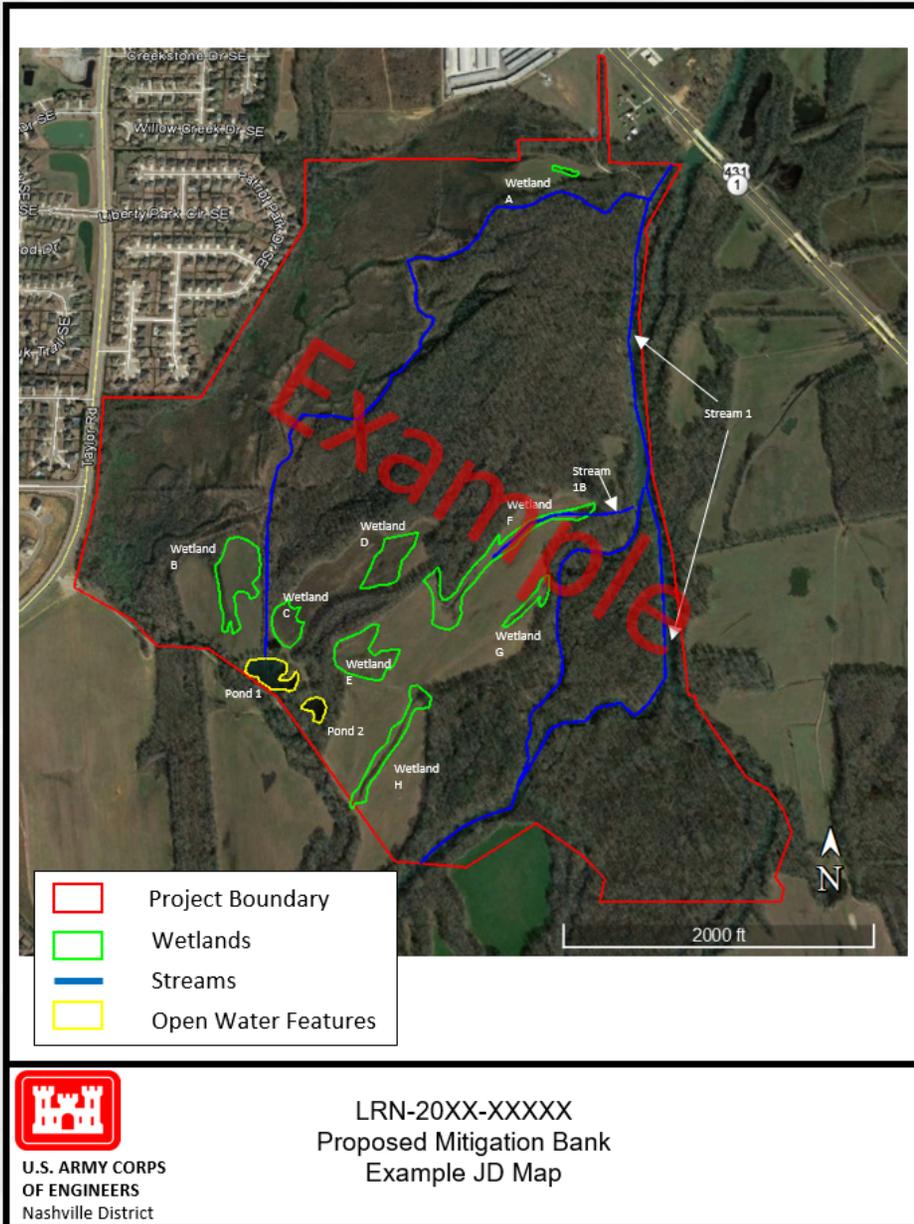
Preliminary (PJD)

- Valid for a specific project
- Only applicable to waters of the U.S.
- Not appealable
- No coordination with other agencies is required

Approved (AJD)

- Valid for 5 years
- Applicable to waters of the U.S. and **non-waters** of the U.S.
- **Appealable**
- In certain circumstances (Rapanos vs. 2015 CWR), coordination with EPA and HQ is required





U.S. ARMY CORPS
OF ENGINEERS
Nashville District

LRN-20XX-XXXXX
Proposed Mitigation Bank
Example JD Map

Site Number/Feature	Latitude	Longitude	Estimated amount of aquatic resource in review aarea (acreage and linear feet, if applicable)	Type of aquatic resource	Receiving Water	Notes
Wetland A	34.63769	-86.47227	0.18 acre	Wetland	UT to Flint River	PEM wetland
Wetland B	34.62902	-86.48027	2.90 acre	Wetland	UT to Flint River	PEM wetland
Wetland C	34.62804	-86.47910	1.1 acre	Wetland	UT to Flint River	PEM wetland
Wetland D	34.62935	-86.47678	1.75 acre	Wetland	UT to Flint River	PEM wetland
Wetland E	34.62749	-86.47747	2.18 acre	Wetland	UT to Flint River	PEM wetland
Wetland F	34.62840	-86.47543	3.11 acre	Wetland	Flint River	PEM wetland
Wetland G	34.62875	-86.47326	0.59 acre	Wetland	Flint River	PEM wetland
Wetland H	34.62600	-86.47668	1.52 acre	Wetland	Flint River	PEM wetland
Stream 1	34.62592	-86.47568	6414 linear feet	Non-Wetland	Flint River	Riverine, Perennial; Flint River
Stream 1A	34.62482	-86.47498	2826 linear feet	Non-Wetland	Flint River	Riverine, Perennial
Stream 1B	34.62158	-86.47148	1112 linear feet	Non-Wetland	Flint River	Riverine, Ephemeral
Stream 1C	34.62458	-86.47568	3655 linear feet	Non-Wetland	Flint River	Riverine, Perennial
Pond 1	34.62721	-86.47952	1.13 acre	Non-Wetland	UT to Flint River	Pond
Pond 2	34.62657	-86.47838	0.37 acre	Non-Wetland	UT to Flint River	Pond



U.S. ARMY CORPS
OF ENGINEERS
Nashville District

LRN-20XX-XXXXX
Proposed Mitigation Bank
Example Waters Table

I need a permit...Now what?

General Permits

Regional Permits (RP) – developed by the District Commander (DC) for particular categories of activities specific to a region

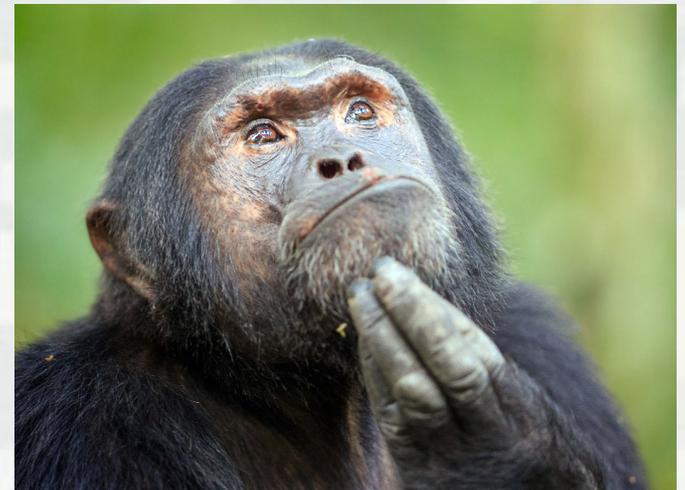
Programmatic General Permits (PGP) – developed by the DC to provide Corps authorization to minor activities adequately covered by state law; “one stop shopping”.

Nationwide Permits (NWP) – Authorized nationwide for commonly recurring activities having minimal cumulative adverse impacts to the aquatic environment

Individual Permits

Individual Permit (IP) – projects with potential for substantial environmental impacts, requiring public notice and coordination and public interest review

Letter of Permission (LOP) – projects with minor impacts, abbreviated coordination and review



Nationwide Permits

- Account for 90% of workload
- Re-issued every 5 years
- Currently 52 NWP's (Issued March 19, 2017 and will expire March 18, 2022)
- All have standard general conditions and may have special and/or regional conditions
- Some have Pre-construction notification requirements
- 45 day processing time
- Waivers possible in some cases



Nationwide Permits

1. Aids to Navigation
3. Maintenance
12. Utility Lines
13. Bank Stabilization
14. Linear Transportation Projects
18. Minor Discharges
27. Aquatic Habitat Restoration, Establishment, and Enhancement
29. Residential Developments
39. Commercial and Institutional Developments



Nationwide Permits

Summary of the 2017 Nationwide Permits¹

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Changes	Other Information
NWP 1 – Aids to Navigation	10	none	PCN not required	no	navigable waters of the U.S.	none	
NWP 3 – Maintenance	10/404						
(a) Repair, rehabilitation, or replacement of previously authorized, currently serviceable structures or fills		authorizes only minor deviations for maintenance	PCN not required	no	all waters of the U.S.	Clarify that NWP authorizes removal of previously authorized structures and fills.	Does not authorize: maintenance dredging for the primary purpose of navigation; beach restoration; or new stream channelization or stream relocation projects. Limits stream channel modification to the minimum necessary for the maintenance activity.
(b) Discharges associated with removal of accumulated sediments and debris in the vicinity of existing structures, including intake and outfall structures and associated canals		200 feet from structure; minimum necessary to restore capacity intake or outfall or associated canal	all activities	yes	all waters of the U.S.	Remove provision authorizing the placement of new or additional riprap to protect the structure (riprap may be authorized by NWP 13).	
(c) Temporary structures, fills, and work necessary to conduct maintenance activity			PCN not required	no	all waters of the U.S.	Clarify that NWP authorizes use of temporary mats, if regulated by the district.	Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations
NWP 14 – Linear Transportation Projects	10/404	<ul style="list-style-type: none"> 1/2 acre in non-tidal waters 1/3 acre in tidal waters 	<ul style="list-style-type: none"> >1/10 acre discharges into special aquatic sites 	yes, if PCN required	all waters of the U.S.	Add notes referencing concepts from definition of “single and complete linear project” and 33 CFR 330.6(d).	Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. Does not authorize storage buildings, parking lots, train stations, aircraft hangars, or other non-linear transportation features.
NWP 29 – Residential Developments	10/404	<ul style="list-style-type: none"> 1/2 acre 300 linear feet of stream bed, but DE can waive for intermittent and ephemeral streams 	all activities	yes	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	Clarify that any losses of stream bed are applied to the 1/2-acre limit.	For residential subdivisions, the aggregate total loss of waters of the U.S. cannot exceed 1/2-acre.



Complete Application for a Nationwide Permit

Information necessary for a **complete Pre-Construction Notification**, per National General Condition 32:

- Name, address, and telephone number of applicant
- Location
- Request and identify the specific applicable NWP or NWP(s)
- Description of proposed activity
- Purpose and need
- Direct and indirect adverse environmental effects
- Description of proposed mitigation
- List of other authorizations

TVA RESTRICTED INFORMATION

OMB No. 3316-0090
Exp. Date 08/31/2016

JOINT APPLICATION FORM
Department of the Army/TVA

The Department of the Army (DA) permit program is authorized by Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (P.L. 95-217). These laws require permits authorizing structures and work in or affecting navigable waters of the United States and the discharge of dredged or fill material into waters of the United States. Section 205 of the Tennessee Valley Authority Act, as amended, prohibits the construction, operation, or maintenance of any structure affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries until plans for such construction, operation, and maintenance have been submitted to and approved by the Tennessee Valley Authority (TVA).

Name and Mailing Address of Applicant		Name, Mailing Address, and Title of Authorized Agent	
[Redacted]		[Redacted]	
Email Address: [Redacted]		Email Address: [Redacted]	
Telephone Number: Home [Redacted]	Office [Redacted]	Telephone Number: Home [Redacted]	Office [Redacted]
Mobile [Redacted]		Mobile [Redacted]	

Facility/Activity Location (include all known information): [Redacted] Reservoir: [Redacted]

Address: [Redacted]

Subdivision, Lot No., and/or Tax Parcel No.: [Redacted]

Stream Name and Mile: [Redacted] Longitude/Latitude: [Redacted]

Application submitted to DA TVA

Date activity is proposed to commence: [Redacted] Date activity is proposed to be completed: [Redacted]

Describe in detail the proposed activity, its purpose and intended use (private, public, commercial, or other). Describe structures to be erected including those placed on fills, piles, or floating platforms. Also describe the type, composition, and quantity of materials to be discharged or placed in the water; the means of conveyance; and the source of discharge or fill material. Please attach additional sheets if needed.

[Redacted]

Application is hereby made for approval of the activities described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I understand that TVA and the U.S. Army Corps of Engineers may contact an Authorized Agent listed above and such Agent may act on my behalf on all aspects of this application. I agree that, if this application is approved by TVA, I will comply with the terms and conditions and any special conditions that may be imposed by TVA. Please note the U.S. Army Corps of Engineers may impose additional conditions or restrictions.

Date: [Redacted] Name of Applicant (Printed): [Redacted] Signature of Applicant: [Redacted]

18 U.S.C. Section 1001 provides that: "Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both." The appropriate DA fee will be assessed when a permit is issued.

Names, addresses, and telephone numbers of adjoining property owners, lessees, etc., whose properties also join the waterway:

[Redacted]

TVA 17423 [01-12-2015] Page 1 of 2

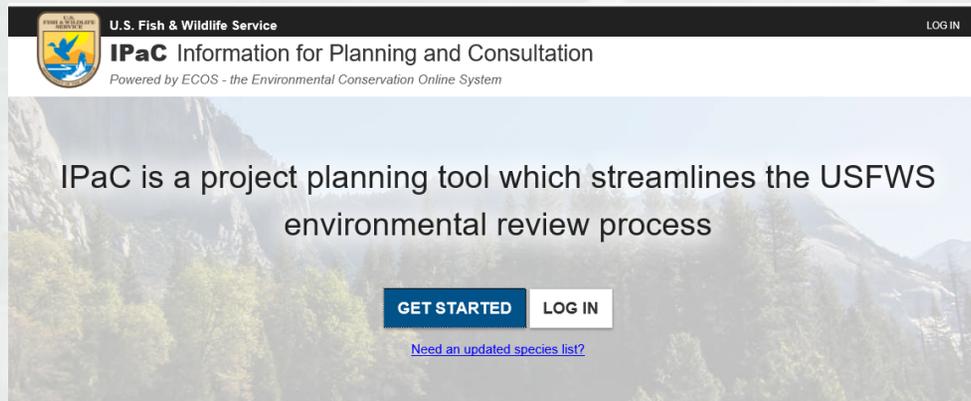
TVA RESTRICTED INFORMATION



Complete Application for a Nationwide Permit

Information necessary for a **complete Pre-Construction Notification**, per National General Condition 32, cont:

- Delineation of wetlands, other special aquatic sites, and other waters
 - Name of protected species under ESA
 - Identification of potentially affected historic properties
 - Identification of wild and scenic river (if applicable)
 - Submit a written statement that section 408 permission has been requested (if applicable)
- Other requirements per National Conditions for specific NWP
- Other requirements per Regional Conditions



U.S. Fish & Wildlife Service
LOG IN
IPaC Information for Planning and Consultation
Powered by ECOS - the Environmental Conservation Online System

IPaC is a project planning tool which streamlines the USFWS environmental review process

GET STARTED LOG IN
[Need an updated species list?](#)



National Register of Historic Places
Public, non-restricted data depicting National Register spatial data processed by the Cultural Resources GIS facility. Data last updated in April, 2014.



Typical Processing Procedure for a Nationwide Permit

1. Pre-application consultation (optional)
2. Applicant submits ENG Form 4345 to district regulatory office*
3. Application received and assigned identification number (LRN-2019-XXXXX)
4. If complete, Corps begins review process. If incomplete, RAI sent to applicant
5. Application is reviewed** by Corps
6. Other Federal agencies consulted, if appropriate
7. District engineer makes decision
8. Permit Issued or Permit denied and applicant advised of reason

* A local variation, often a joint federal-state application form may be submitted

** Review period may be extended if applicant fails to submit information or due to requirements of certain laws



Individual Permits

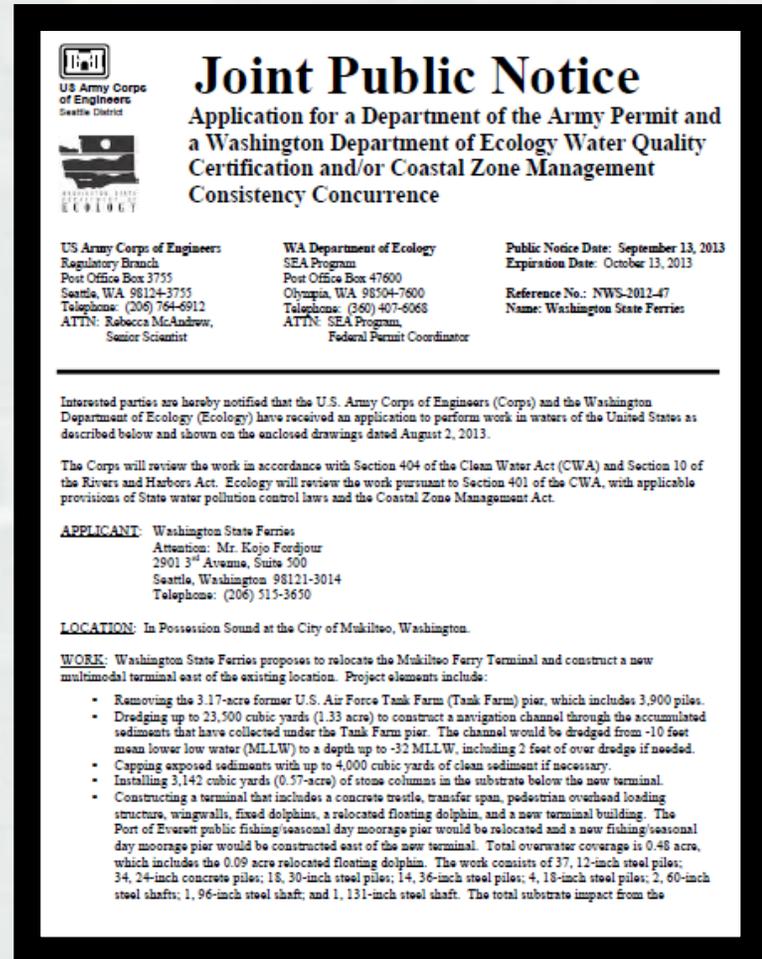
- Generally reserved for projects with potential for substantial environmental impacts
- 120 day review period
- Public Notice
- Coordination with involved agencies, interested parties, and the general public
- Full public interest review (PIR)
 - Conservation
 - Economics
 - Aesthetics
 - General Environmental Concerns
 - Wetlands
 - Fish and Wildlife Values
 - Historic Properties
 - Land Use
 - Navigation
 - Recreation
 - Water Quality
 - Needs and welfare of people



Complete Application for an Individual Permit

An application is complete when:

- Sufficient information is received to prepare the **Public Notice** (PN)
- The evaluation clock begins with a complete application



Joint Public Notice
Application for a Department of the Army Permit and a Washington Department of Ecology Water Quality Certification and/or Coastal Zone Management Consistency Concurrence

US Army Corps of Engineers
Regulatory Branch
Post Office Box 3755
Seattle, WA 98124-3755
Telephone: (206) 764-6912
ATTN: Rebecca McAndrew,
Senior Scientist

WA Department of Ecology
SEA Program
Post Office Box 47600
Olympia, WA 98504-7600
Telephone: (360) 407-6068
ATTN: SEA Program,
Federal Permit Coordinator

Public Notice Date: September 13, 2013
Expiration Date: October 13, 2013
Reference No.: NWS-2012-47
Name: Washington State Ferries

Interested parties are hereby notified that the U.S. Army Corps of Engineers (Corps) and the Washington Department of Ecology (Ecology) have received an application to perform work in waters of the United States as described below and shown on the enclosed drawings dated August 2, 2013.

The Corps will review the work in accordance with Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. Ecology will review the work pursuant to Section 401 of the CWA, with applicable provisions of State water pollution control laws and the Coastal Zone Management Act.

APPLICANT: Washington State Ferries
Attention: Mr. Kojo Fordjour
2901 3rd Avenue, Suite 500
Seattle, Washington 98121-3014
Telephone: (206) 515-3650

LOCATION: In Possession Sound at the City of Mukilteo, Washington.

WORK: Washington State Ferries proposes to relocate the Mukilteo Ferry Terminal and construct a new multimodal terminal east of the existing location. Project elements include:

- Removing the 3.17-acre former U.S. Air Force Tank Farm (Tank Farm) pier, which includes 3,900 piles.
- Dredging up to 23,500 cubic yards (1.33 acre) to construct a navigation channel through the accumulated sediments that have collected under the Tank Farm pier. The channel would be dredged from -10 feet mean lower low water (MLLW) to a depth up to -32 MLLW, including 2 feet of over dredge if needed.
- Capping exposed sediments with up to 4,000 cubic yards of clean sediment if necessary.
- Installing 3,142 cubic yards (0.57-acre) of stone columns in the substrate below the new terminal.
- Constructing a terminal that includes: a concrete trestle, transfer span, pedestrian overhead loading structure, wingwalls, fixed dolphins, a relocated floating dolphin, and a new terminal building. The Port of Everett public fishing/seasonal day moorage pier would be relocated and a new fishing/seasonal day moorage pier would be constructed east of the new terminal. Total overwater coverage is 0.48 acre, which includes the 0.09 acre relocated floating dolphin. The work consists of 37, 12-inch steel piles; 34, 24-inch concrete piles; 18, 30-inch steel piles; 14, 36-inch steel piles; 4, 18-inch steel piles; 2, 60-inch steel shafts; 1, 96-inch steel shaft; and 1, 131-inch steel shaft. The total substrate impact from the



Complete Application for an Individual Permit

Information necessary to prepare a PN includes:

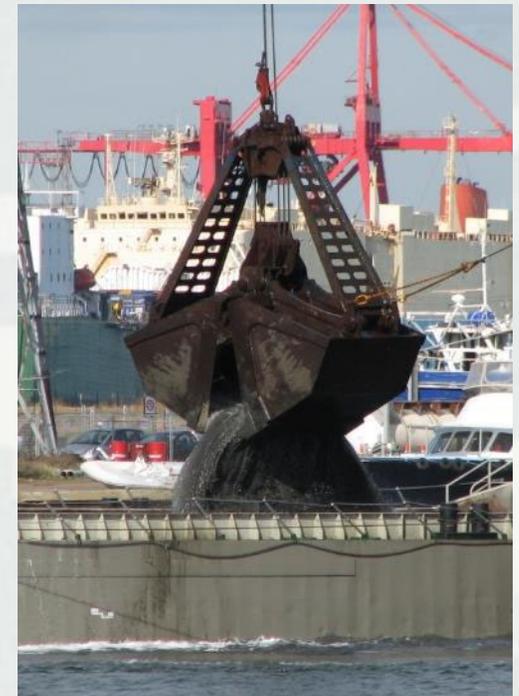
- Location
- Purpose and need
- Description of proposed activity
 - Location (lat/long, section, township, range, waterway, city, county)
 - Scheduling
 - Names and address of adjoining property owners
 - Location and dimensions of adjacent structures
 - List of other authorizations
- Direct and indirect adverse environmental effects of activity
 - Site specific effects, types of resources, etc
 - Efforts to avoid and minimize impacts
 - Mitigation statement
- Delineation of aquatic resources
- Projects drawings/sketches
- List of adjacent property owners
- Construction schedule



Complete Application for an Individual Permit

Information necessary to prepare a PN includes:

- If activity involves dredging:
 - Type, composition and quantity of material to be dredged
 - Method of dredging
 - Site and plans for disposal of dredged material
 - » For disposal activities in waters of the U.S.
 - Source of material
 - Method of transportation and disposal of material
 - Location of disposal site
- If activity involves construction of an impoundment, must provide documentation to show the proposal will comply with State dam safety criteria
- Signature of applicant



Complete Application

Request for Additional Information (RAI)

Review application within 15 days of receipt;

Request essential information within 15 days of receipt

- Simplify the means for request
- Provide a timeframe for applicant's response
- Withdraw at the applicant's request
- Withdraw if applicant fails to respond



Public Notice

- Is the primary method of **advising** all interested parties of a proposed activity for which a permit is sought
- **Solicits** agency and public comment for input in the decision making process
- Should go out 15 days after receipt of a complete application
 - 15/30 day comment period





US Army Corps of Engineers

Public Notice

Public Notice No. 17-23A

Date: November 2, 2017

Nashville District

Corps Application No. LRN-1

Expires: December 17, 2017

Please address all comments to:
Nashville District Corps of Engineers, Regulatory Division
East Regulatory Office (Attn: Aric Payne)
1301 Riverfront Parkway, Suite 206
Chattanooga, Tennessee 37402

PUBLIC NOTICE

US ARMY CORPS OF ENGINEERS

SUBJECT: Proposed expansion of existing industrial facility in Knoxville, Knox County, Tennessee

TO ALL CONCERNED: The application described below has been submitted for a Department of the Army (DA) Permit pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). Application (ARAP NRS No. 17-23A) has also been made to the State of Tennessee, Department of Environment and Conservation, Division of Water Resources for a water quality certification pursuant to Section 401(a)(1) of the CWA (33 U.S.C. 1341).

APPLICANT:

LOCATION: Wetlands adjacent to Sand Branch, Holston River; HUC 060101040304 – Sand Branch Watershed; Latitude N. 35° 15' 00", Longitude W. -83° 05' 00"; National Drive in Knoxville, Knox County, Tennessee.

DESCRIPTION OF PROPOSED WORK: The applicant proposes expand its existing industrial facility on its own property, which includes the deposition of fill material into 1.4 acres of jurisdictional wetlands.

Plans and location maps of the proposed project are provided in this notice. If you wish to view additional plans, please contact this office or visit our web site at: <http://www.lm.usace.army.mil/Media/PublicNotices.aspx>

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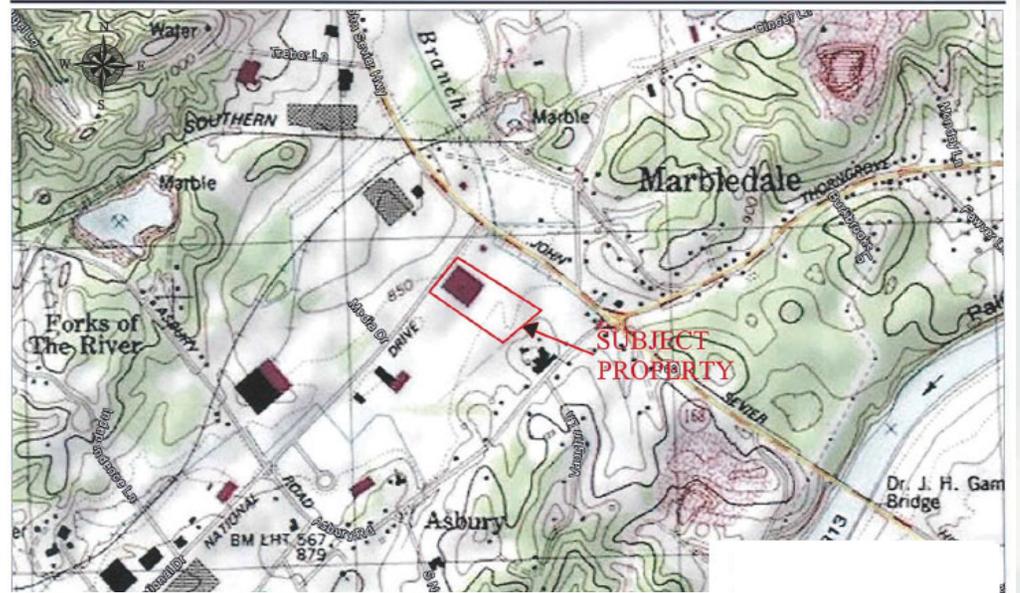


Exhibit 2 of 3

3
LOCATION MAP
PLASTICS
NATIONAL DRIVE
TENNESSEE
3



Complete Application for an Individual Permit

Information needed for USACE to make a permit decision

- Alternatives analysis
 - Purpose and need
 - Avoidance and minimization
- National Historic Preservation Act Compliance
- Endangered Species Act Compliance
- Compensatory Mitigation
- Water Quality Certification



Typical Processing Procedure for a Standard Individual Permit

1. Pre-application consultation (optional)
2. Applicant submits ENG Form 4345 to district regulatory office*
3. Application received and assigned identification number (LRN-2019-XXXXX)
4. If complete, Public Notice issued (within 15 days of receiving information). If incomplete, RAI and issue Public Notice after complete application received.
5. 15 to 30 day comment period depending on nature of activity
6. Proposal is reviewed** by Corps and:
 - Public
 - Special interest groups
 - Local agencies
 - State agencies
 - Federal agencies
7. Corps considers all comments
8. Other Federal agencies consulted, if appropriate
9. District engineer may ask applicant to provide additional information
10. Public hearing held, if needed
11. District engineer makes decision
12. Permit Issued or Permit denied and applicant advised of reason

* A local variation, often a joint federal-state application form may be submitted

** Review period may be extended if applicant fails to submit information or due to requirements of certain laws



Permitting Example

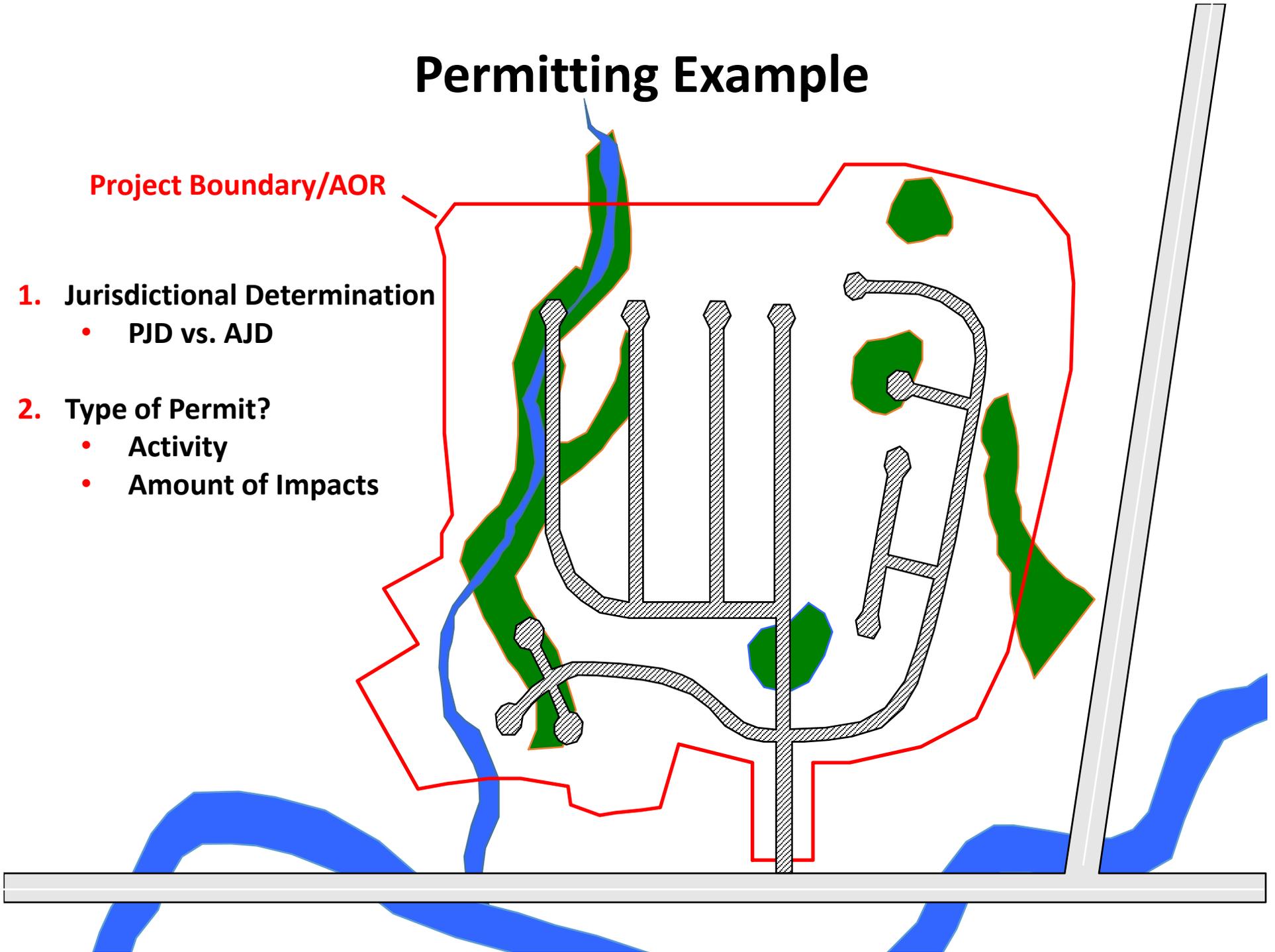
Project Boundary/AOR

1. Jurisdictional Determination

- PJD vs. AJD

2. Type of Permit?

- Activity
- Amount of Impacts





1670 ft

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Questions?

